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C O N F I D E N T I A L SECTION 01 OF 02 KUALA LUMPUR 000294

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TAGS: [PGOV](#) [PHUM](#) [PINR](#) [KDEM](#) [KCOR](#) [SOCI](#) [MY](#)

SUBJECT: PRIME MINISTER ANNOUNCES FIRST STEPS IN JUDICIAL

REFORM

REF: A. KUALA LUMPUR - 261 - PRESSURE FOR LEADERSHIP
CHANGE

[1](#)B. KUALA LUMPUR 256 - UMNO VOICES NAJIB TAKE-OVER

[1](#)C. 07 KUALA LUMPUR 1458 - LAWYERS TAKE TO STREETS

[1](#)D. 07 KUALA LUMPUR 1446 - VIDEO OF JUDGE FIXING

Classified By: Classified By: POLITICAL SECTION CHIEF MARK D. CLARK, RE
ASON 1.4 (B AND
D).

Summary

[1](#)1. (C) Some eight months after the Malaysian Bar Council took to the streets to demand judicial reform, Prime Minister Abdullah Badawi used an April 17 Bar Council dinner to announce the proposed establishment of a Judicial Appointment Commission and review of judicial salaries. He also announced ex gratia payments to six former judges ousted in 1988 after they protested then Prime Minister Mahathir's undermining of judicial independence and separation of powers. Senior figures from the Prime Minister's UMNO party did not attend the event, not counting Abdullah himself and Minister for judicial reform Zaid Ibrahim. The dinner's participants, including opposition party leaders, expressed their support of the announcements with a standing ovation for the Prime Minister. The proposed measures represent initial steps to reaffirm judicial autonomy, and reflect the work of Minister Zaid Ibrahim, but restoring the independence of the courts will require constitutional amendments and much more political will. PM Abdullah's announcement, his first major policy initiative since the March 8 election, momentarily took the spotlight off Abdullah's fight for political survival. The measures, however, do not have resonance in his UMNO party and will not strengthen Abdullah's support within the party elite. End Summary.

Judicial Crisis of 1988

[1](#)2. (SBU) In 1988, then Prime Minister Mahathir introduced a bill into parliament to amend the Constitution and divest the courts of "the judicial power of the Federation." Afterwards, the courts would have only those powers granted it by Parliament. In addition, the Attorney-General was empowered to determine if a case would go to trial, and in practical terms, even which judge would hear the case. Salleh Abas, then Lord President of the Supreme Court attempted to defend the judiciary's autonomy. He was suspended and brought before a tribunal on charges of misconduct. Five judges from the Supreme Court sided with Salleh Abas and all were suspended. Eventually Salleh Abas and two of the five judges were sacked and judicial

independence undermined.

¶3. (SBU) Twenty years later the public widely perceives the judicial system as ineffective and riddled with corruption, as illustrated by the recent Lingham tape scandal (ref D) and the September 2007 Bar Council protest march in Putrajaya (ref C). The Bar Council began calling for a review of the sackings in 2006, but it was not until Zaid Ibrahim's appointment, following the March 8 general election, as de facto Minister for judicial reform, that the Government moved to review the case. At the April 17 Bar Council dinner, Zaid spoke briefly before introducing the Prime Minister, and used the occasion to say that he "hoped never again to see judges punished for doing their jobs."

Prime Minister announces judicial reforms

¶4. (SBU) Prime Minister Abdullah Badawi spoke at the Bar Council dinner, which included leaders from the opposition and the ruling National Front's component parties, newly elected members of parliament, Bar Council members, human rights activists, and members from the diplomatic corps. No senior leaders from Abdullah's UMNO party were present, other than Zaid Ibrahim. The PM used the event to announce proposed initial measures to reform the judiciary and make amends to the six judges and their families wronged during the 1988 judicial crisis. Abdullah said the government plans to establish a Judicial Appointments Commission to make the process of nominating, appointing, and promoting judges more transparent and representative. The Commission will be responsible for identifying and recommending judicial nominees for the Prime Minister's consideration. Abdullah did not give details of the Commission's structure, but assured attendees consultations on the workings and structure

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of the Commission will include primary stakeholders. He also stated the government would review the judiciary's term of service in order to set salaries and compensation at competitive levels to "ensure that the bench can attract and retain the very best of the nation's talent."

¶5. (SBU) Abdullah fell short of offering a government apology, as advocated by Zaid, to the six judges sacked in 1988, but announced "goodwill ex gratia payments" to the judges or their surviving families. Abdullah stated, "I do not presume to equate your contributions, pain and loss with mere currency, but I hope that you can accept this as a heartfelt and sincere gesture to mend what has been." Abdullah's announcements were well received by the audience and earned him a standing ovation at the end of his speech.

Comment

¶6. (C) The proposed reforms are only initial steps toward correcting the imbalances created by Mahathir in 1988. Parliament, under tight Executive control, continues to define the court's power and the Attorney General continues to determine which cases go to trial and which judge hears the case. To return separation of power and increase judicial independence requires the rescinding of the 1988 amendments. However, without a two-thirds majority in Parliament, Abdullah's National Front must cooperate with the opposition parties. Although Zaid alluded to such cooperation in his speech, privately he is concerned about the opposition's response. Michael Yeoh, a sitting commissioner for Malaysia's Human Rights Commission (SUHAKAM) told poloffs Zaid expressed concern that the opposition will start negotiating with the government over amendments to the Constitution, which the National Front has never done over submitted bills, let alone with constitutional amendments. This is unfamiliar terrain and current deep mistrust between the National Front and the opposition makes cooperation unlikely during the near-term as both sides try to grapple

with their roles in the new Parliament.

17. (C) The proposed Judicial Appointment Commission is yet an unrealized promise, and the devil is in the details. Legislative action is required to create the Commission and define its mission, organization, and scope of authority. Parliament could dilute the new Commission's role, as was done during the formation of SUHAKAM. Deputy Prime Minister Najib, the most likely successor to the embattled Abdullah (ref A and B), stated on April 18, "The formation of this commission, it must be emphasized, is only in an advisory capacity. The final authority still lies with the Prime Minister to make formal recommendations to the (King) and the Council of Rulers."

18. (C) Viewed as a political maneuver, the PM's judicial reform announcement builds bridges with civil society activists and opposition parties. Moreover, the announcement showed Abdullah acting on a topic of public concern, momentarily taking the spotlight off the UMNO leadership struggle and pressure for Abdullah to resign. However, this is a gamble. Judicial reform measures do not have much resonance within Abdullah's UMNO party as we have heard from insiders, and seeing opposition leaders applauding Abdullah's remarks will not strengthen the Prime Minister's popularity with the UMNO elite.

KEITH